



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

WAGGONER CARR
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March 6, 1963

Mr. Jules Damiani, Jr.
Criminal District Attorney
Galveston County
Galveston, Texas

Opinion No. C-27

Re: Whether the Moody House is
exempt from the payment of
ad valorem taxes under the
stated facts.

Dear Mr. Damiani:

You have requested our opinion as to whether or not the property set out in your statement of facts is exempt from ad valorem taxes. The following facts are copied from your letter:

"The property originally known as the Buccaneer Hotel, including the Buccaneer Cabanas and Pool was acquired by The Methodist Homes for Older People, a charitable corporation incorporated under the laws of the State of Texas, on the 29th day of December, 1961, as a gift from The Moody Foundation, and commenced operating it as a home for older people on the 1st day of January, 1962.

"The Methodist Homes for Older People was required to take title to the property subject to any and all leases and rental contracts then in existence. There were three (3) outstanding leases for store or office space that are still in effect and from which the present owner receives a small rental. All of the rents received from these three (3) tenants is by action of the Board, being placed in a special 'Health Care Trust Fund' and is used solely for health and welfare care of residents of Moody House.

"One of the rental units is occupied as a barber shop which is being operated almost entirely for the convenience of the residents of Moody House. The other

rental units are a small gift shop and the Galveston Merchants Association, all of which have leases that were in effect at the time the property was acquired and as above stated, the present owner was required to accept the title subject to these leases. The total rental received from these units amounts to only \$375.00 per month.

"This property is maintained and operated as a home for older people and offers full custodial and nursing care. Some of the present residents are not in a financial position to pay for their entire care and maintenance which is being subsidized from other funds. Moody House in 1962, paid an average of approximately \$1,000.00 per resident as subsidization. It will continue to be the policy to accept residents at Moody House who will require some subsidization for their care and support.

"Moody House has been licensed by the State Health Department for a nursing home and this service is now being offered with five (5) nurses being provided. The care being offered to residents of Moody House includes lodging, meals, medical and nursing service.

"The Methodist Homes for Older People is incorporated under the Texas Nonprofit Corporation Act for charitable and benevolent purposes. Moody House, operated by said corporation, is a project of The Texas Conference of The Methodist Church, and is operated by an administrator and staff under the supervision of an Executive Steering Committee appointed by the Board of Directors of said corporation and approved by the Annual Conference of The Methodist Church.

"The Administrator and Steering Committee have attempted to determine what it will cost to operate Moody House. The charges being made to residents are expected to underwrite the cost of furnishing the residents' living quarters, all meals, a complete staff including

an administrator, a full time Director of Social Activities, a resident doctor, a sufficient nursing staff which includes registered nurses and licensed vocational nurses.

"There is no admission fee or a fixed amount for admission to Moody House. In each case the matter of the amount to be paid by the resident is negotiated and a mutual agreement as to the amount to be paid by the individual is determined from his needs and ability to pay. It is not expected that every person will underwrite the cost of his or her care, and it is not expected that any person will be in such financial circumstances as to require full financial aid. All funds received from residents, rentals or otherwise, will be used for the care and maintenance of the residents, and that such funds will be from time to time supplemented by The Methodist Church.

"With reference to paragraph three, you will note that there are various units rented out in the Moody House to private individuals. Vernon's Annotated Civil Statutes, Article 7150 and The Constitution of the State of Texas, Article 8--section 2, holds that to be an institute of purely public charity so that its property may be exempt for taxation, the institution must be one whose property is used wholly and exclusively for charitable purposes. In BPOE Lodge No. 151 vs City of Houston, 44 SW2nd 488, there is a holding that where individual concessions were leased out to individuals and were not used solely for the benefit of the organization, that said organization would not be exempt from taxation. It is the writer's opinion that the Moody House is basically a charitable institution, however, under the holding herein before cited it would appear by leasing for a fee its premises to individuals other than the residents of the institution and the allowance of the public to patronize and use these facilities would result in the ruling that the Moody House was not a

charitable organization and is not exempt from taxation. Your opinion is respectfully requested."

Under the facts stated, it appears that the organization owning this property described has complied with the necessary law and facts to make it a charitable institution, and the property would be exempt from ad valorem taxes were it not for the fact that certain parts of the property are being leased to tenants as stated in your request. This matter has been discussed at length in opinions heretofore rendered by this department, being Opinions Nos. WW-1277 dated March 16, 1962, WW-1424 dated August 24, 1962, and WW-1427 dated August 30, 1962, copies of which are enclosed herewith.

In Morris v. Lone Star Chapter No. 6, Royal Arch Masons, 68 Tex. 698, 5 S.W. 519 (1887), the facts show that the building known as the Masonic Temple was used by plaintiff and other Masonic organizations to hold their meetings but that a part of the building was rented to different persons, and plaintiff received a monthly rental for each of said rooms rented amounting in the aggregate to about \$150.00 per month for all of the rooms in the first and second stories in the building.

The Court in its opinion had the following to say:

" . . . The burden of showing that an exemption from taxation exists, rests upon the party who claims it, . . . and when the construction of the law is doubtful, the doubt will be resolved in favor of the state, and against the exemption, . . . Applying these rules, we conclude that the building in question is not 'used exclusively' by appellee in the sense given to these words in the constitution; the exclusive use meant being the actual and direct use for the purposes of the association, and not a use by others for revenue, although that revenue may be exclusively appropriated for the objects of the charity. The legislature in exercising the power conferred by the constitution seems to follow the construction we have adopted, and exempt 'all buildings belonging to institutions of purely public charity, together with the lands belonging to and occupied by such institutions, not leased or otherwise used with a view to profit, and all moneys and

credits appropriated solely to sustaining such institutions.' This means that a building leased for profit is not exempt although such profit may be appropriated solely to the purposes of the charity, and not to the private gain of its promoters or stockholders. . . ."

In City of Houston v. Scottish Rite Benev. Ass'n., 111 Tex. 191, 230 S.W. 978 (1921), the members of the Ancient and Accepted Scottish Rite of Freemasonry of the City of Houston purchased certain property which was known as Scottish Rite Cathedral. The lot and building situated thereon was actually used by members of the association, and no part of the same was rented or used by any other person or institution. The association owned no property used with a view to profit. It had no capital stock and declared no dividends. This property was used by the Masonic orders, including San Jacinto Lodge of Perfection No. 6 and the Houston Chapter of Rose Croix No. 5, each of which collected membership fees and dues which were used for charitable purposes other than the bare necessities for the lodge. No person received any salary or profit directly from the lodge or lodges. The building was used principally for meetings of the various Masonic orders.

The facts further showed that the association was not one that did nothing but dispense charity, but it did dispense charity. The main purpose of the association was to provide a lodge and place of meeting, and to look after and provide for individual Masons and their families.

The Court said in its opinion:

"By the very manner and terms of this property's acquisition, it was required to be used, as it was in fact used, by the two Masonic orders, 'to enable them to pursue their work as Masonic lodges,' such work being, as agreed, only partly charitable.

"To the extent that the property was used by Masonic organizations, whose activities included other fields than charity, it was not, and could not be, used exclusively by an institution of purely public charity. Not being used exclusively by an institution of purely public charity, the claim to exemption under the constitutional provision fails,

and our answer to the certified question is that the property was subject to taxation."

In the case of B.P.O.E., Lodge No. 151 v. City of Houston, 44 S.W.2d 488 (Tex.Civ.App. 1931, error ref.), the City of Houston sued the Elks Lodge for ad valorem taxes on the property occupied by the lodge. The facts showed that the lodge dispensed charity but carried on other activities such as games, dances and other social activities for the purpose of entertaining its members and securing new members.

The Court said that whether appellant is a purely charitable institution is one of fact. There was within the building a barbershop, the proprietor of which paid no rent but kept all the money he took in from services rendered to members of the lodge, a gymnasium instructor, and a restaurant operator, none of whom paid any rent or money to the lodge.

The Court said:

"Under the law, for the property of appellant to be exempt from taxation, it must not only be owned, but also be used exclusively, by an institution of purely public charity. Is it so used here? The barbershop is operated by one who gets all the income. He pays no rent, but he gets free space to operate his trade, and retains for himself all the income. The man who runs the gymnasium is a paid instructor. He not only receives \$200 a month as instructor, but he keeps in the gymnasium his own stock of supplies and sells them to the members, has free space, and retains the whole of the income for his own use. The man who runs the restaurant also keeps and furnishes all his supplies and retains all the income. He shares in the use of space free of rent. The man who gives electric baths furnishes the towels and rubbing liniments and keeps all the income. . . .

". . .

"Exemptions from taxation are not favored, and the law allowing exemptions should be given a strict interpretation. It is the policy of the state, and but justice between

its citizens, that all property should be taxed, and that no property shall escape this common burden, unless it comes clearly within the exemption, and it was incumbent on the appellant to show that it comes within the exemption clauses of the Constitution and the statute. We do not think this has been shown."

It is our opinion that since portions of the Moody House are rented to private individuals who pay rent to the operators of Moody House, that in accordance with the decisions above, this property is not used exclusively for charitable purposes and therefore does not meet the requirements to be exempt from taxation.


S U M M A R Y

Under the facts stated the property involved in this opinion is not used exclusively by an institution of purely public charity and is therefore not exempt from ad valorem taxes.

Yours very truly,

WAGGONER CARR
Attorney General of Texas

By:


J. H. Broadhurst
Assistant

JHB:pw

Enclosures

APPROVED:

OPINION COMMITTEE
W. V. Geppert, Chairman
Joe R. Long
Brady Coleman
Albert Pruett
Jerry Brock

APPROVED FOR THE ATTORNEY GENERAL
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